

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GREGORY RHODES,

1:02-cv-05476-AWI-DLB-P

Plaintiff,

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS** (Doc. 53)

vs.

ALAMEIDA, et al.,

**ORDER DENYING IN PART AND
GRANTING IN PART MOTION TO
DISMISS** (Doc. 40)

Defendants.

Plaintiff, Gregory Rhoades ("plaintiff"), a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On June 14, 2006, the Magistrate Judge filed [Findings and Recommendations](#) herein which were served on the parties and which contained notice to the parties that any objections to the Findings and Recommendations were to be filed within thirty (30) days. To date, the parties have not filed objections to the Magistrate Judge's Findings and Recommendations.

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1 In accordance with the provisions of 28 U.S.C.
2 § 636(b)(1)(C) and Local Rule 73-305, this Court has conducted a
3 de novo review of this case. Having carefully reviewed the
4 entire file, the Court finds the Findings and Recommendations to
5 be supported by the record and by proper analysis.

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. The Findings and Recommendations, filed June 14, 2006,
8 are ADOPTED IN FULL; and,

9 2. Defendants' motion to dismiss, filed December 19, 2005,
10 is DENIED IN PART and GRANTED IN PART as follows:

11 a. Defendant Alameida's motion to challenge service
12 of process is DENIED;

13 b. Defendants' motion to dismiss plaintiff's First
14 Amendment claim for failure to exhaust is DENIED;

15 c. Defendants' motion to dismiss plaintiff's Due
16 Process and Equal Protection claims is DENIED;

17 d. Defendants' motion to dismiss plaintiff's Eighth
18 Amendment claim is GRANTED; and,

19 e. Defendant Brown and Vogel's motion to dismiss them
20 from this action is DENIED.

21
22 IT IS SO ORDERED.

23 **Dated: August 28, 2006**
24 0m8i78

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE